

REMARKS

Claims 30-38 are pending.

Claim 36 has been amended to correct an error in the spelling of "theophilline."

Claim 38 has been amended to recite visually determining the presence of dimpled skin and, therefore, is understood to be in proper dependent form.

A certified translation of the priority application, Italian application no. MI99A001894, is submitted herewith.

Claim 30 has been amended and now recites:

from 2 to 90 weight percent of at least one of:

(a) at least one conjugated linoleic acid as a free acid or a combination of conjugated linoleic acids, each of the conjugated linoleic acids of the combination being a free acid, (b) at least one salt of at least one conjugated linoleic acid, the salt comprising at least one an alkaline metal, an alkaline earth, ammonia, monoethanolamine, diethanolamine, and triethanolamine, and (c) a combination of (a) and (b).

Support for this amendment is found in the priority application at, e.g., pages 9, 17, and 22.

Claims 30-36 and 38 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. application publication no. 20010041708 ("Halvorsen").

Halvorsen claims the benefit of a provisional application filed February 15, 2000 ("the Halvorsen provisional"), which date is later than the present application's foreign priority date of September 9, 1999. A certified translation of the foreign priority application is provided herewith. Applicants submit that the foreign priority application supports the claims as presented herein. Accordingly, Halvorsen is not available as prior art against the present application. Applicants maintain the option of establishing that the present claims are patentable over Halvorsen and/or the Halvorsen provisional.

Claims 30-36 and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent no. 6,444,234 (also published as WO/01351) to Kirby et al. ("the Kirby patent")

either alone or in view of U.S. patent no. 5,667,793 to Cho et al. ("Cho").

Kirby discloses an aqueous cream formulation designed for promoting cellulite removal.<sup>1</sup> The cream includes CLA in an amount of 0.3 parts by weight.<sup>2</sup> This amount of CLA is less than one-sixth of the minimal amount presently recited. Moreover, Kirby discloses that a different compound—theophylline—is the active ingredient.<sup>3</sup> At most, Kirby would have motivated one to pursue the use of different amounts of theophylline. Kirby, taken alone or in combination with Cho, simply does not disclose or suggest the present invention.

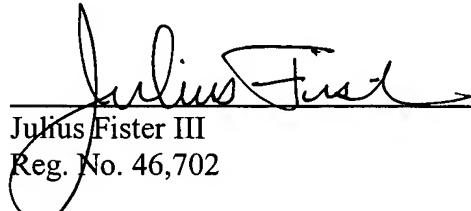
Claim 37 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Halvorsen or Kirby in view of international publication no. WO/9012563 ("Nechay").

As discussed above, Halvorsen is not available as prior art to the present application. Kirby, taken alone or in combination with Nechay and the other cited references, does not disclose or suggest the present invention.

Enclosed is a \$475.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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<sup>1</sup> Kirby, 38:37-38.

<sup>2</sup> *Id.*, 38:43.

<sup>3</sup> *Id.*, 38:61-64.